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REPORTS

OF MALAYSIAN AND SINGAPORE CASES DETERMINED IN THE HIGH COURTS, THE FEDERAL COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL.

SINGAPORE REPORTS

CHENG SWEE HIN v. PUBLIC PROSECUTOR

[C.A. (Wee Chong Jin C.J., Kulasekaram & Chua JJ) July 3, 1980]

[Singapore — Criminal Appeal No. 6 of 1978]

Criminal Law and Procedure — Murder — Defence of diminished responsibility — Whether on balance of probabilities "abnormality was such as substantially impaired" — Penal Code (Cap. 103), s. 300 Exception 7.

Penal Code s. 300 Exception 7 — Diminished responsibility — Whether on balance of probabilities "abnormality was such as substantially impaired".

The appellant in this case was charged, tried and convicted by the High Court of murder by causing the death of one Chan. The appellant and the deceased were partners of a firm which was subsequently converted into a private limited company at Dunlop Street. The facts revealed that in March 1977, their relationship was strained over a disagreement relating to the appellant's desire to change his company car. By June 1977 their relationship had deteriorated rapidly. The deceased had told the appellant that he was no longer to be actively engaged in the business of the company.

On June 23, 1977 the appellant joined a group tour of Haadyai, Thailand. There he bought a revolver.

The appellant surrendered himself together with the said revolver to the police at the Toa Payoh Police station on the day of the shooting incident. In a statement recorded by the police, the appellant admitted firing two shots at the deceased at Dunlop Street.

The defence of diminished responsibility was raised at the trial. The trial judges after reviewing the medical evidence found that the appellant was not suffering from an abnormality of mind at the material time.

Held, dismissing the appeal: (1) in a case where the accused is tried before a judge without a jury, and where the defence of diminished responsibility is raised and the judge is satisfied on the balance of probabilities that the accused was suffering from "abnormality of mind" from one of the causes specified in Exception 7 of section 300 of the Penal Code, the crucial question that arises for the judge to decide is whether or not the abnormality was such as substantially impaired the accused's mental responsibility for his acts in causing the death or being a party to causing the death;

(2) having considered all the relevant evidence, there was no doubt that in all the circumstances the trial judges were entitled to conclude, as they did, that the defence of diminished responsibility had not on a balance of probabilities been established.

Cases referred to:-

(1) *Peter Lee* v. *Public Prosecutor* Criminal Appeal No. 19 of 1976 *(unreported).*

(2) *R.* v. *Byrne* [1960] 3 All E.R. 1.

(3) *Walton* v. *The Queen* [1978] 1 All E.R. 542, 546.

CRIMINAL APPEAL.

M.H. Rubin for the appellant.

Sowaran Singh (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering judgment of the Court): The appellant, Cheng Swee Hin alias Koh Kee Fat, was charged, tried and convicted by the High Court of murder by causing the death of one Chan Mui Kiah. We dismissed his appeal against conviction and now proceed to give our reasons.

In April 1973 the appellant, the deceased and one Loi Hee San were partners in a firm called Swiss Engineering Co. of No. 136, Dunlop Street. In March 1976 the partnership firm was converted into a private limited company called Swiss Engineering Co. Pte. Ltd., the registered office being at No. 124, Dunlop Street. In August 1976 Loi Hee San withdrew his capital from the company and thereafter ceased to have any interest in it. The appellant and the deceased were directors each drawing a salary of $600 a month and share 1% of the monthly turnover of the company. Each also was given a company car for his sole use.

In March 1977, their relationship was strained over a disagreement relating to the appellant's desire to change his company car and by June 1977 their relationship had deteriorated rapidly. In early June the appellant was told by the deceased that he was no longer to be actively engaged in the business of the company and that as from July 1, 1977 he would receive only $150 a month salary. The deceased's decision led to altercations between them.

On June 23, 1977 the appellant joined a group tour of Haadyai, Thailand. There he bought a revolver and returned to Singapore by air on June 26. The others returned to Singapore by train. On the morning of June 27 the appellant hired a Datsun car No. SQ. 2184A for two days. That evening he was seen standing outside No. 124, Dunlop Street at about 6.20 p.m. carrying a bundle wrapped in a newspaper by one Ng Tai Lai. He asked Ng Tai Lai for the deceased and on Ng Tai Lai replying that he did not know where the deceased was the appellant knocked on the door of No. 124, Dunlop Street. As there was no response he left.

At about 8.00 p.m. two gun-shot sounds coming from the rear of No. 124, Dunlop Street were heard. The deceased was seen coming out of the front door, running alongside the shops groaning in pain and entering a flower shop, No. 132, Dunlop Street. The

appellant was seen coming out of No. 124, Dunlop Street, entering a car parked in front of the shop and speeding off from the scene.

Inside the flower shop the deceased was bleeding profusely and, when asked what had happened, he replied "Johnny". The appellant was also known as Johnny. The deceased was eventually taken by ambulance to the Singapore General Hospital where he was found to be in critical condition with severe gunshot wounds in his body. He was pronounced dead at 8.50 p.m.

At about 8.45 p.m. that same evening the appellant went to Toa Payoh Police Station carrying a newspaper wrapped bundle. He told the police officers that he had committed a severe offence. The police opened the bundle and found it to contain a Smith and Wesson revolver with five rounds of ammunition in it. The appellant said he had purchased the revolver in Thailand, that he was involved in a shooting case at Dunlop Street and that he wished to surrender. He was then arrested.

About five hours later, at 1.45 a.m. on June 28, 1977, Inspector Yeo recorded a statement from the appellant. The statement reads as follows: —

"In June 1977 the deceased and the sleeping partner cut down my salary and took back the company's car. They also asked me to withdraw from the partnership. They proposed to pay me a sum of $50,000 in return for my share in the Company. As I was not on good terms with them I agreed to withdraw from the partnership provided the Company paid the $50,000 in one payment but they said that they could only pay me in instalments. They said that if I disagreed to their proposal, they would make me a sleeping partner and pay me $150 a month... I had been approaching the deceased again and again regarding the settlement of my partnership in the Company. I also requested him to hold a meeting to settle this matter but he refused. I was annoyed, when the deceased told me that they will hold a meeting on June 30, 1977. On June 24, 1977, I left Singapore for Thailand, as I wanted to go there to buy a gun. I wanted to take revenge on the deceased. I paid 4000 in Thai currency. On June 26, 1977 I took a taxi from Thailand to Penang. I returned to Singapore by air on the same day. I did not inform the Company about my trip to Thailand. On June 27, 1977 I went to office as usual. I left the office at about 10.00 a.m. I went for a show. Some time after 4.00 p.m. I went home. At about 7.00 p.m. I left my home, with my gun, which I wrapped with a piece of newspaper. I arrived at the office at about 7.50 p.m. I met the deceased in the office and we had an argument over the changing of locks on the main door. I intended to kill the deceased and after a short argument, and on seeing him alone in the office, I fired one shot at him. The deceased then ran and I fired the second shot at him. I left the scene in a borrowed car as I intended to surrender myself at the Toa Payoh Police Station. My car was punctured on the way to the Police Station. I took a taxi and made my way to the Toa Payoh Police Station where I surrendered myself."

A post-mortem was performed at 9 a.m. on June 28, 1977 by Dr. Chao, the Senior Forensic Pathologist, who certified that the cause of death was haemorrhage from a gun-shot wound in the lung. The spent bullets and the two empty cartridge cases found in the Smith and Wesson revolver were examined by the Senior Scientific Officer, Lim Chin Hua, who certified that both bullets had been fired from the revolver seized from the appellant.

The appellant testified at the trial. He confirmed the dispute between him and the deceased over the affairs of the company. He gave evidence of the meetings they had in late May and early June during which he said the deceased abused him in vulgar language and challenged him to fight. He said he kept cool although he was very annoyed. He said the unsettled state of affairs saddened and depressed him and feeling that he had been wronged he left Singapore to get away from it all. He admitted buying the revolver when he was in Haadyai.

He described at great length his movements and his actions from 5 p.m. on the fateful day. He said that when he arrived at the company's premises he did not expect to find anyone still there. The deceased opened the door and he walked past the deceased to his air-conditioned room. As he tried to open the door with his key the deceased told him to be quick as the deceased was about to leave. The deceased told him that the locks had been changed and when he questioned why this had been done the deceased abused him repeatedly in extremely vulgar language. He said he became extremely angry and drew out his revolver. At that juncture he said the deceased tried to rush at him and being frightened he fired a shot at the deceased and fired the revolver in rapid succession. He said that thereafter he was thrown into a state of confusion and his mind was a complete blank. He then walked out of the office quickly and left the scene in his car. The trial judges rejected his defence of grave and sudden provocation. They did not accept the appellant's evidence that the deceased abused him that evening. As an appellate court we cannot interfere with that finding as there was ample evidence to support that finding.

The defence of diminished responsibility was also raised at the trial and in support of that defence the appellant gave evidence that he was an adopted child and had an unhappy childhood and led the evidence of Dr. Wong Yip Chong, a consultant psychiatrist. Dr. Wong first interviewed the appellant on September 28, 1978 for an hour and a half less than a month before the commencement of the trial. His subsequent interviews with the appellant were during the trial, in the court, each time for about five minutes. His last interview was the day before he gave evidence and the interview lasted one and a half hours in the Remand Prison. In addition, Dr. Wong was furnished, during the trial, with case sheets of the appellant, including notes of interviews which Dr. Teo Seng Hock, Senior Consultant Psychiatrist of Woodbridge Hospital had with the appellant's adopted mother and sister.

Dr. Wong was of the opinion that the appellant at the time of the killing was suffering from an abnormality of mind arising from "a condition of disease (schizophrenic depression) which substantially impaired his mental responsibility." Dr. Wong prepared a Psychiatric Report on the appellant. This Report which was admitted in evidence is dated November 6, 1978, the day when he commenced his evidence. Dr. Wong's evidence at the trial was summarised by the trial judges in their grounds of decision in the following passage: —

"Dr. Wong's evidence can be put shortly thus. The accused from a tender age had a schizoid personality. In layman's term he was an introvert. Having that personality, with the

pressure building around him over the company's affairs, in particular the rejection by the deceased of him, had caused him to suffer from schizophrenic illness. The stress factor was introduced in March 1977, by which time schizophrenic depression had set in. On the day of the murder, when he met the deceased, he was unduly sensitive, severely disturbed in emotions with 'defectivity in volitional control'. In that state of mind, the accused would have been 'well-nigh near insane'; and, the abnormality of the mind was more than substantially impaired. Therefore, the defence of diminished responsibility applied to the act of the accused when he shot the deceased."

The prosecution led evidence in rebuttal in the person of Dr. Teo Soon Hock. Dr. Teo disagreed with Dr. Wong that the appellant had suffered from depressive illness which became marked in March 1977 and continued till the time of the offence. Dr. Teo was of the opinion that the appellant neither had a schizoid personality from childhood nor was he suffering from schizophrenic depression when he shot the deceased. Dr. Teo saw the appellant professionally on several occasions. The first occasion was on July 20, 1977, less than a month after the offence and his case notes of that interview showed that he found no abnormality. According to Dr. Teo four months later, on November 29, 1977, the appellant was found to have auditory hallucinations and later delusions of persecution and was treated for schizophrenic illness. Dr. Teo's opinion was that the contributing factors to that illness could have been the mental agony of the commission of the offence and the confinement in prison.

The trial judges after reviewing the medical evidence found that the appellant was not suffering from an abnormality of mind when he shot the deceased. They went on to make another finding, on the assumption that the appellant was suffering from an abnormality of mind at the material time. We set out their further finding in the following passage of their grounds of decision: —

"More crucial, assuming that he was, was the abnormality of the mind of the accused such as to have substantially impaired the mental responsibility for his act? Our finding was that the evidence of Dr. Teo confirmed our judgment that on the facts, on a balance of probabilities, the defence of diminished responsibility had not been proved. The test we applied was that adopted by the Court of Criminal Appeal (Criminal Appeal No. 19 of 1976) in the unreported decision of *Peter Lee* v. *Public Prosecutor*.

'The correct test, if at all it is applicable on the particular facts of a case, is that laid down by Lord Parker in *R* v. *Byrne* [1960] 3 All E.R. 1 where the expression 'mental responsibility for his acts' was explained to mean 'a mental state which in popular language (not that of the McNaghten Rules) a jury would regard as amounting to partial insanity or being on the borderline of insanity'. This interpretation of 'mental responsibility' was accepted as authoritative and correct by the Privy Council in *Rose* v. *Reginam* [1961] 1 All E.R. 859'."

At the hearing of the appeal it was contended on behalf of the appellant that the trial judges were wrong when considering the defence of diminished responsibility in applying as a conclusive test the test adopted by the court in the case of *Peter Lee* v. *Public Prosecutor*,[1] *supra*. We rejected that contention as it was plain in the context of the passage we have just quoted that the trial judges were considering, assuming the appellant was suffering from an abnormality of mind, whether or not such abnormality of mind substantially impaired his mental responsibility for his act in doing the killing. On that question the trial judges applied the test adopted by the court in *Peter Lee's* case, *supra*, namely whether on the balance of probabilities, the defence had established that the appellant at the time of the killing was suffering from a state of mind "amounting to partial insanity or being on the borderline of insanity." We were of the opinion that the trial judges applied the correct test.

It is to be observed that in *R.* v. *Byrne*[2] Lord Parker C.J. was saying what would be adequate directions to the jury, assuming that the jury are satisfied on the balance of probabilities that the accused was suffering from "abnormality of mind" from one of the causes specified. We think it useful to set out in full the relevant passage of Lord Parker's judgment. It is to be found at pages 4 and 5 of the [1960] 3 All E.R. and reads as follows: —

"Assuming that the jury are satisfied on the balance of probabilities that the accused was suffering from 'abnormality of mind' from one of the causes specified in the parenthesis of the subsection, the crucial question nevertheless arises: Was the abnormality such as substantially impaired his mental responsibility for his acts in doing or being a party to the killing? This is a question of degree and essentially one for the jury. Medical evidence is, of course, relevant but the question involves a decision, not merely whether there was some impairment of the mental responsibility of the accused for his acts, but whether such impairment can properly be called 'substantial', a matter on which juries may quite legitimately differ from doctors.

Furthermore, in a case where the abnormality of mind is one which affects the accused's self-control, the step between 'he did not resist his impulse' and 'he could not resist his impulse' is, as the evidence in this case shows, one which is incapable of scientific proof. *A fortiori*, there is no scientific measurement of the degree of difficulty which an abnormal person finds in controlling his impulses. These problems, which in the present state of medical knowledge are scientifically insoluble, the jury can only approach in a broad, common-sense way. This court has repeatedly approved directions to the jury which have followed directions given in Scots cases where the doctrine of diminished responsibility forms part of the common law. We need not repeat them. They are quoted in *R.* v. *Spriggs*. They indicate that such abnormality as 'substantially impairs his mental responsibility' involves a mental state which in popular language (not that of the M'naghten Rules) a jury would regard as amounting to partial insanity or being on the border-line of insanity."

The Privy Council in *Walton* v. *The Queen*[3] paraphrased the language of Lord Parker as follows: —

"As was pointed out by Lord Parker C.J. in *R.* v. *Byrne*, what the jury are essentially seeking to ascertain is whether at the time of the killing the accused was suffering from a state of mind bordering on but not amounting to insanity. That task is to be approached in a broad common sense way."

In a case where the accused is tried before a judge without a jury, where the defence of diminished responsibility is raised and the judge is satisfied on the balance of probabilities that the accused was suffering from "abnormality of mind" from one of the causes specified in Exception 7 of section 300 of the Penal Code, the crucial question that arises for the judge to decide is whether or not the abnormality was such as substantially impaired the accused's mental responsibility for his acts in causing the death or being a party to causing the death. Adopting the language in *Walton* v. *The Queen, supra*, the judge is to approach that task in a broad common sense way and he has essentially to decide whether at the time of the killing the accused was suffering from a state of mind bordering on but not amounting to insanity.

Finally, having carefully considered all the relevant evidence we were in no doubt that in all the circumstances the trial judges were entitled to conclude, as they did, that the defence of diminished responsibility had not on a balance of probabilities been established. We were also satisfied that the trial judges were entitled to conclude, assuming that the appellant was suffering from an "abnormality of mind" from one of the causes specified in Exception 7 of section 300 of the Penal Code, that the defence had not on a balance of probabilities established that the abnormality was such as substantially impaired the mental responsibility of the appellant for his act in causing the death of the deceased.

For all these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *Amarjit, Rubin & Partners.*

FOUR SEAS COMMUNICATIONS BANK LTD. v. ENG CHUAN & CO. & ORS.

[C.A. (Kulasekaram, Chua & Rajah JJ.) July 4, 1980]
[Singapore — Civil Appeal No. 4 of 1980]

Landlord and Tenant — Rent-controlled premises — Claim for recovery of possession — No tenancy by estoppel — Misdirection by learned appeal judge — Control of Rent Act (Cap. 266).

The plaintiffs/appellants in this case were owners of a rent-controlled premises known as 61, 61A and 61B Chulia Street, Singapore. They claimed for recovery of possession of the said premises from the defendants/respondents who bought the premises in 1964 subject to the existing tenancy of Eng Chuan & Company.

The premises had, sometime in 1946 or 1947, been let by the then owners to the firm of Eng Chuan & Co., a sole proprietorship. The tenancy was taken in the name of the firm. At the time of letting one Lee Siew Pan was the sole proprietor of the firm. In 1951, four other persons were added as partners. In 1954 the said Lee and two others withdrew from the partnership. The three remaining partners continued operating the firm until January 1977 when the partnership was struck off the Register of Business Names. However, the defendants continued to occupy the premises.

By a notice to quit of January 29, 1976 and served at the premises the tenancy was terminated on February 29, 1976. The plaintiffs claimed that the defendants as from March 1, 1976 were trespassers. The learned District Judge allowed judgment against the defendants and ordered them to deliver vacant possession of the premises to the plaintiffs on or before September 15, 1979. The said judgment was reversed by the High Court. The plaintiff appealed.

Held, allowing the appeal: (1) there was no evidence that the plaintiffs/appellants had entered into a new agreement creating a new tenancy agreement in favour of the three remaining partners of Eng Chuan & Co. in 1964;

(2) the defendants/respondents had not pleaded estoppel at the trial and as this defence were not available to them the learned appeal judge misdirected himself when he dealt with the appeal as if such a plea had been expressly pleaded by the defendants/respondents.

Case referred to:-

(1) *South Union Co. Ltd.* v. *Seng Hin Ltd.* [1973] 1 M.L.J. 39.

CIVIL APPEAL.

Kirpal Singh for the appellants.

L.A.J. Smith for the respondents.

Cur. Adv. Vult.

Rajah J. (delivering the judgment of the Court): This is an appeal against the judgment of D'Cotta J. wherein he allowed the appeal of the appellants in District Court Appeal No. 36 of 1979, the defendants in D.C. Summons No. 1577 of 1977.

In the D.C. Summons the plaintiffs therein (appellants in this appeal) as owners of the rent-controlled premises known as 61, 61A and 61B Chulia Street, Singapore (the premises), claimed recovery of possession of same from the defendants (respondents in this appeal), having bought the premises in 1964 subject to the existing tenancy of Eng Chuan & Co.

The premises had, sometime in 1946 or 1947, been let by the then owners to the firm of Eng Chuan & Co., a sole proprietorship. The tenancy was taken in the name of the firm. At the time of the letting one Lee Siew Pan was the sole proprietor of the firm. In March 1951 four other persons were added as partners. In January 1954, the said Lee Siew Pan and two others withdrew from the partnership. The three remaining partners continued operating the firm until January 1977 when the partnership was struck off the Register of Business Names. However, the defendants continued to occupy the premises.

By a notice to quit dated January 29, 1976, and served at the premises the tenancy was terminated on February 29, 1976. The plaintiffs claimed that the defendants as from March 1, 1976 were trespassers and asked for judgment against them for recovery of the premises. The defendants did not dispute ownership of the premises by the plaintiffs but said that they were not trespassers. They admitted service of the notice to quit but denied that the tenancy had been terminated, as claimed, on February 29, 1976.

Defendants contended that (1) the plaintiffs had accepted them as tenants as they had openly occupied the premises and (2) continued occupation by the firm of the premises for the past 38 years gave them protection under the Control of Rent Act (Cap. 266).

The learned District Judge rejected these contentions and held (1) that the tenancy taken in the name of the firm of Eng Chuan & Co. was vested in Lee Siew Pan, (2) that, at best, the partners of Eng Chuan & Co. were licensees of Lee Siew Pan, (3) that the service of the notice to quit at the premises was valid service and (4) that the defendants who had occupied the premises as licensees of Lee Siew Pan had become trespassers as from March 1, 1976. Having so held he entered judgment for the plaintiffs against all the defendants and the latter were ordered to deliver vacant possession of the premises to the plaintiffs on or before September 15, 1979.

Against this judgment the defendants appealed to the High Court in D.C. Appeal No. 36 of 1979 on the following grounds: —

(1) That the learned trial judge erred in law in holding that a tenancy in the name of a partnership firm is vested in the person who is the sole proprietor or the partners at the time the tenancy was created.

(2) That the learned trial judge erred in law in holding that the notice to quit terminated the tenancy in